

\*E-Filed 3/4/11\*

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KUANG-BAO OU-YOUNG,

No. C 10-0464 RS

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR LEAVE TO SEEK  
RECONSIDERATION**

JOHN E. POTTER, UNITED STATES  
POSTMASTER GENERAL,

Defendant.

I. INTRODUCTION

Plaintiff Ou-Young seeks leave to file a motion for reconsideration of the portion of this Court's Order granting defendant's motion to dismiss. The Order found that, despite three attempts to do so, Ou-Young failed to plead a facially plausible hostile work environment claim. Ou-Young now asks the Court to reconsider this finding. The United States has not opposed the request or otherwise indicated its position.

II. LEGAL STANDARD & DISCUSSION

The Local Civil Rules of the Northern District of California provide that "[b]efore the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case" any party may request leave to file a motion for reconsideration of an interlocutory order. N.D. Cal.,

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ORDER

1 Civil L.R. 7-9(a). Reconsideration generally is appropriate where a party can show that “a material  
2 difference in fact or law exists from that which was presented to the Court before entry of the  
3 interlocutory order,” and that “in the exercise of reasonable diligence the party applying for  
4 reconsideration did not know such fact or law at the time of the interlocutory order.” Rule 7-  
5 9(b)(1). A party might also introduce a “new material fact or a change of law occurring after the  
6 time of such order.” Rule 7-9(b)(2). Finally, a “manifest failure by the Court to consider material  
7 facts or dispositive legal arguments which were presented to the Court before such interlocutory  
8 order” can warrant reconsideration. Rule 7-9(b)(3).

9 Ou-Young argues the Order failed to consider material facts and dispositive legal arguments.  
10 That Order found that Ou-Young failed to plead a plausible hostile environment claim because he  
11 did not identify *any* facts suggestive or necessarily consistent with a race-based hostile working  
12 environment. Ou-Young argues here that the Court failed to consider an “alternative” test, as set  
13 forth by the Ninth Circuit in *EEOC v. Hacienda Hotel*, 881 F.2d 1504, 1515-16 (9th Cir. 1989),  
14 overruled on other grounds by *Burrell v. Star Nursery, Inc.*, 170 F.3d 951 (9th Cir. 1999). Ou-  
15 Young describes this “alternate standard” as follows: “The proper analysis for employer liability in  
16 hostile environment cases is what management-level employees knew or should have known, not  
17 whether an employee was acting within the scope of employment.” (Pl. Mot. at 4: 17-20, *citing*  
18 *Nichols v. Frank*, 42 F.3d 503, 508 (9th Cir. 1989); *Hacienda Hotel*, 881 F.2d at 1515-16).

19 *Hacienda Hotel* does *not* stand for the proposition that a plaintiff alleging a race-based  
20 hostile environment need not plead a connection to race. What *Hacienda* did hold was that an  
21 employer may be held liable for sexual harassment by one employee against another, where  
22 someone in a management position had actual knowledge of the harassment but did nothing. There  
23 was no question in *Hacienda Hotel* that the plaintiff had pleaded that her work environment was  
24 severely and pervasively hostile on the basis of gender. *Id.* at 514-17. The problem with Ou-  
25 Young’s claim was that he failed to do even this (substituting, of course, comments or behavior of a  
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1 racial nature for those connected to gender). Accordingly, Ou-Young has presented no viable  
2 grounds to support reconsideration and it will not be afforded here.<sup>1</sup>

3 Finally, Ou-Young appears to ask that the Court reconsider the portion of the Order  
4 instructing him to remove claims identical to the ones dismissed as a result of defendant's first  
5 motion to dismiss. While Ou-Young apparently disagrees with this Court's analysis, he presents no  
6 new factual or dispositive legal arguments and reconsideration is not warranted.

7 IT IS SO ORDERED.

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9 Dated: 3/4/11



10 RICHARD SEEBORG  
11 UNITED STATES DISTRICT JUDGE  
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26 <sup>1</sup> To the extent Ou-Young's motion asks this Court to reconsider its dismissal of the criminal  
27 allegations he asserted against his former co-workers and employer, the request is denied. However  
28 ardently he believes his colleagues committed various crimes, Ou-Young cannot criminally  
"prosecute" them via civil litigation.

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**THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

Kuang-Bao P Ou-Young  
1362 Wright Avenue  
Sunnyvale, CA 94087

DATED: 3/4/11

/s/ Chambers Staff

Chambers of Judge Richard Seeborg

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